E3 Cont cosmetic or pharmaceutical product.--

REMARKS:

Claim 1 describes a topical lotion for relieving pain, swelling or inflammation which comprises glycerine; lavender oil; and oatstraw extract, wherein the oatstraw extract is prepared by steeping oatstraw in heated water.

Claim 8 describes a method of treating pain, swelling, itching or inflammation wherein the above-described lotion is applied topically to inflamed, painful or swollen areas.

Claim 17 describes an additive comprised of at least 50% oatstraw extract, the oatstraw extract prepared by steeping oatstraw in heated water, at least 25% glycerine, and 0.1-0.2% lavender oil and a suitable carrier.

Claim 18 describes a hair or body product comprising: at least 50% oatstraw extract, said oatstraw extract prepared by steeping oatstraw in heated water, at least 25% glycerine, and 0.1-0.2% lavender oil and a suitable carrier.

As amended, claim 20 describes a process for preparing an oatstraw extract comprising steeping a quantity of oatstraw in heated water, thereby producing an oatstraw mixture and then filtering the mixture to remove the oatstraw, thereby producing an oatstraw extract.

As amended, claim 25 describes a topical lotion for relieving pain, swelling or inflammation having an active ingredient consisting of oatstraw extract, the oatstraw extract prepared by steeping oatstraw in water and filtering the steeped oatstraw to remove the oatstraw, wherein the lotion is applied topically to the skin of an individual in need thereof. Support for these amendments may be found on page 7 (filtering the oatstraw) and pages 7-8 (application of the lotion to the skin of an individual) of the application as filed.

As amended, claim 26 is directed to an additive having an active ingredient consisting of oatstraw extract, the oatstraw extract prepared by steeping oatstraw in water and filtering the steeped oatstraw, wherein the additive is added to another product. Support for this amendment may be found on page 9 (cosmetic product), page 10 (laundry product) and page 11 (pharmaceutical product) of the

application as filed.

Previous claims 1, 2, 5-9 and 17-22 and 24-26 were rejected under 35 USC 103(a) as being unpatentable over Weed in view of Puchalski and Jakobson. Applicant notes that Weed teaches a plurality of uses for oatstraw, one of which is the addition of dried oatstraw or pulverized oatstraw (oatstraw infusion, see page 200 of Weed) to bath water. Puchalski teaches a shampoo and bath or shower gel composed of several different components, which may include a humectant and/or emollient, which may be glycerine (US Patent 4,690,818, column 2, lines 37-45). Jakobson teaches a polyglycerol fatty acid ester mixture for use as a bath additive which may include lavender oil (US Patent 5,397,497, column 5, lines 11-21) which is listed as one of a number of oils having therapeutic or medicinal properties.

Applicant notes that Weed teaches adding dried oatstraw or pulverized oatstraw directly to bath water in which the body part(s) to be soaked are then immersed. Weed does not teach or suggest that other compounds may be added or that the oatstraw may be mixed with other compounds. Weed also does not teach or suggest adding oatstraw to bath or shower products. Puchalski teaches a long list of optional components which may be added to the shampoo and bath gel products, none of which is oatstraw. Jakobson teaches a polyglycerol fatty acid ester mixture to be added to a bath which does not list oatstraw as a potential additive. Applicant further notes that the products themselves are incompatible – Puchalski teaches a body wash product whereas Weed and Jakobson effectively teach bath additives, one of which is water soluble (Weed) and one of which is not (Jakobson) and that as discussed above there would therefore be no incentive to combine these references. Furthermore, even if one of skill in the art did combine these references, taking Weed and combining Jakobson and Puchalski therewith one of skill in the art could have selected any one of the six other emolients suggested by Puchalski and any one of the sixteen other oils listed by Jakobson and not produced applicant's invention. Thus, it is applicant's opinion that there is no incentive to combine Weed, Jakobson and Puchalski because each describes an incompatible product and Weed offers no teaching that oatstraw should be combined with other body cleansing agents.

Furthermore, both Puchalski and Jakobson provide lengthy lists of optional additives and offer no teaching that specifically glycerine or lavender respectively are of particular usefulness or desirability.

Previous claims 25-26 were rejected under 35 USC 102(b) as anticipated by Weed.

Applicant notes that as discussed above, Weed teaches adding hot or heated water to either dried oatstraw or pulverized oatstraw (oatstraw infusion) either before or after adding the oatstraw to bath water into which the body part(s) to be soaked is subsequently placed. Weed is emphatic regarding the presence of the oatstraw within this bath, stating that the pulverized infusion is strained (to remove large particles but not all particles) or that the bath must contain "the oats and all" (Weed, page 205). Thus, Weed teaches that the beneficial properties of solubilized oatstraw are short-lived and that the oats must be present within the water in order for benefits to be enjoyed. This is not applicant's invention.

As discussed above, amended claim 25 describes a topical lotion for relieving pain, swelling or inflammation having an active ingredient consisting of oatstraw extract, the oatstraw extract prepared by steeping oatstraw in water and filtering the steeped oatstraw to remove the oatstraw, wherein the lotion is applied topically to the skin of an individual in need thereof. Amended claim 26 is directed to an additive having an active ingredient consisting of oatstraw extract, the oatstraw extract prepared by steeping oatstraw in water and filtering the steeped oatstraw, wherein the additive is added to another product, for example, a cosmetic, laundry or pharmaceutical product.

Specifically, applicant discovered that the beneficial properties of the oatstraw are retained even in an oatstraw extract prepared by steeping the oatstraw in heated water and then removing the oatstraw. The extract can then be aliquoted for use as a topical lotion or can be added to other products, as discussed above. It is the step of filtering out the oatstraw that allows this to be done, which Weed emphatically teaches against. Specifically, adding dried oatstraw to bath water as taught by Weed leaves oatstraw which must be cleaned from the bath tub and which also adheres to

the body of the individual and must in some cases be scrubbed off, thereby causing irritation to the skin which was to be treated. By removing the oatstraw, applicant has been able to produce an extract which can be applied to the skin or added to other products which would not be possible if the oatstraw extract was not filtered, as the oatstraw would leave an unpleasant residue or particles or clumps of oatstraw on the skin of the individual and the oatstraw would potentially interfere with other components within the other product. Applicant again notes that Weed teaches soaking in a bath containing oatstraw is necessary for benefits to be obtained. Weed does not teach preparing an oatstraw extract from which the oatstraw itself has been filtered out and applying this extract as a lotion to the skin topically (rather than soaking) or adding this extract to another product. Thus, applicant notes that there is a structural difference between applicant's filtered oatstraw extract and Weed's bathtub water with dried or pulverized oatstraw floating therein, in that applicant's invention has been filtered and Weed teaches against filtering, as discussed above. Furthermore, Weed's tub water with oatstraw in it could not be used for those purposes taught by applicant, that is, as a lotion or as an additive, as discussed above, nor does Weed teach or even suggest that oatstraw would be suitable for these purposes. Specifically Weed teaches that the oatstraw must be present in the water and that the adhering of oatstraw residue to the individual's body is a "necessary evil" to obtain the benefits. Weed did not discover as did applicant that a filtered oatstraw extract would retain beneficial properties and that this extract could then be used as a lotion or as an additive to other products.

As the examiner can see, "magnetized water" has been removed from amended claims 25 and 26, and has been added as dependent claims 28 and 29 respectively.

In the afore-mentioned office action, the Examiner has stated that he could "find no support in scientific literature that 'magnetized' water differs from 'water' in any way". The Examiner has also stated that the affidavits of the inventor and Rick Green submitted previously were not relevant because they were "directed at a distinction between deionized water and 'magnetized' water". Applicant notes that

regular tap water is not used in cosmetic or pharmaceutical preparations and that deionized water is used. Furthermore, as discussed in Mr. Green's affidavit, he was initially in agreement with the Examiner and believed that substituting deionized water for magnetized water would have no effect on the product. That is, Mr. Green also believed that there was no difference between deionized water and magnetized water, that is, that water was water was water. However, as discussed in the affidavit submitted previously, he was surprised when the use of magnetized water resulted in a lotion having improved absorption characteristics compared to the lotion prepared with deionized water. As can be seen from Mr. Green's curriculum vitae, he clearly qualifies as an expert in this area (see United States v. Adams et al., 383 US 39; 86 S. Ct. 708; 15 L. Ed. 2d 572; 1966). As such, applicant believes that this affidavit clearly indicates that magnetized water has different properties compared to non-magnetized water, be it tap water or deionized water. In view of this, it is respectfully requested that the examiner reconsider this affidavit.

Regarding the data presented in US Patent 5,905,265, applicant respectfully does not agree that "the data merely shows that the inventor was able to coax out a difference between the samples in a very specific test". Applicant further notes that the claims of US Patent 5,905,265 are directed to a method of improving skin condition comprising exposing a physiologically acceptable substrate to a magnetic vector potential field and directly applying information energy to the substrate while the substrate is exposed to the magnetic vector potential field to produce a substrate that contains information energy and administering to the skin the substrate that contains information energy, resulting in increased protein synthesis by the skin. That is, this invention is defined as being a method of applying information energy generated by a magnetic field to any suitable substrate so that the modified substrate will then enhance protein synthesis by the skin.

Regarding the "lack of support in scientific literature that 'magnetized water' differs from 'water' in any way", attached herewith is a copy of "Magnetic treatment of water: possible mechanisms and conditions for applications", by V. Kochmarsky, *Magnetic and Electrical Separation* **7**: 77-107, 1996. As discussed on

page 102, this reference states that "magnetic treatment changes the rate of dissolution of CO_2 in water" and that this in turn promotes scale removal in water systems. As discussed on page 106, magnetic devices reduced scaling in over 60 percent of the cases tested in the former USSR and in 75-80% of the cases tested in the former East Germany and Czechoslovakia. Applicant notes that this dissolution of scaling is consistent with applicant's proposed mechanism, discussed in an earlier response which is that when water passes through a magnetic field, the hydrogen ions and dissolved minerals in the water become charged. This charge causes a temporary separation of these minerals and molecular water clusters resulting in water with increased clarity and softness, and reduced surface tension. This in turn enhances the physical characteristics of the lotion, such as conductivity, viscosity, softness and in turn facilitating ease of application, rate/depth of absorption and moisturization quality without leaving a film. Also enclosed is a copy of Johnson et al., 1998, *Journal of Clinical Periodontology* **25**: 316-321. This reference describes how a magnetized water oral irrigator significantly reduced calculus formation, which the authors state is consistent with the theory of hydromagnetics, that is, that magnetized water prevents or inhibits mineralization (page 319). Thus, applicant notes that the effects of magnetization on water are documented, as discussed above.

In view of the foregoing, further and more favorable consideration is respectfully requested.

Respectfully submitted

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